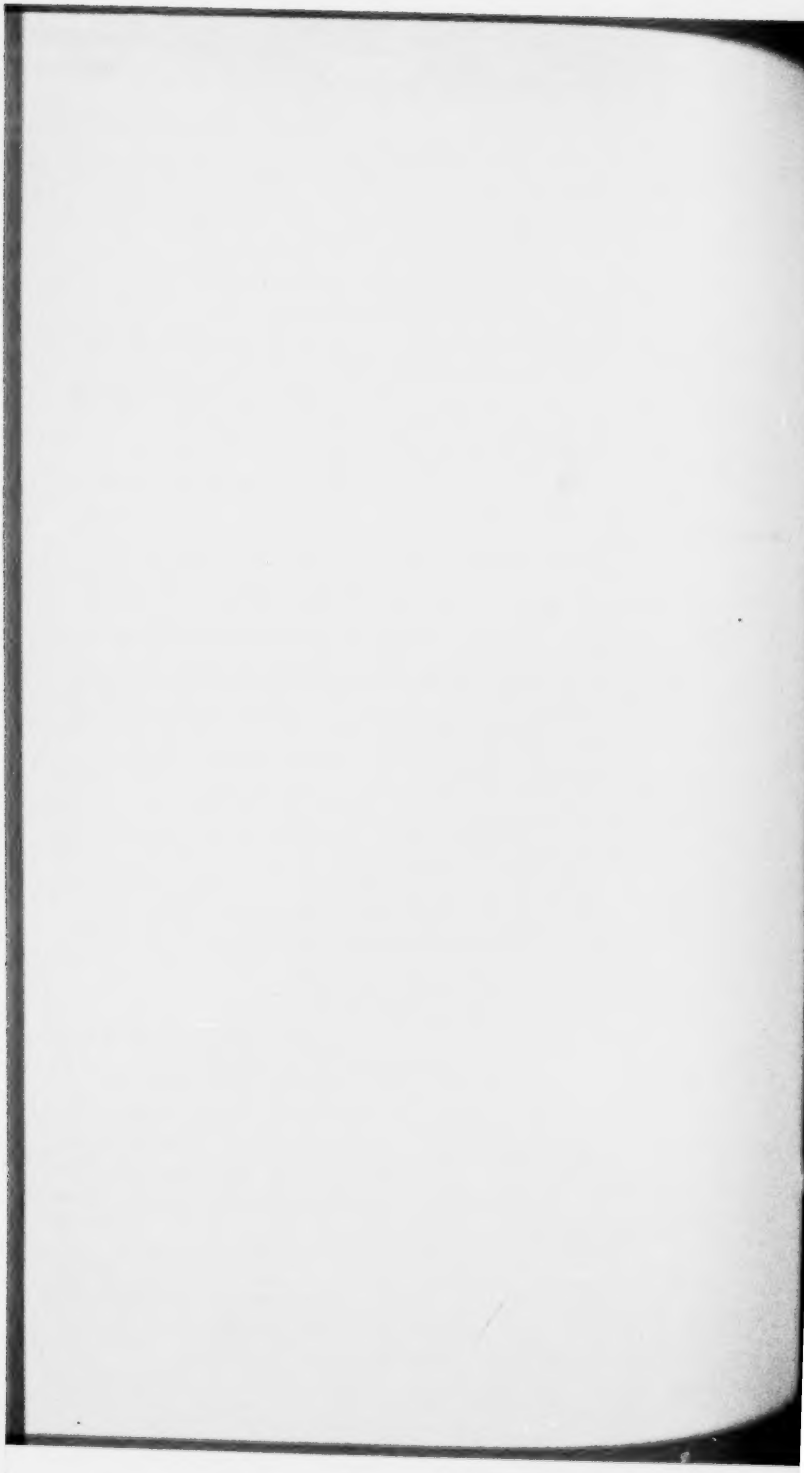

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FILED
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JAMES H. McKENNEY
CLERK

IN THE

Supreme Court of the United States.

OCTOBER TERM, A. D. 1897.

THE MERCANTILE TRUST COMPANY,
Complainant,
vs.
CHICAGO, PEORIA & ST. LOUIS RAILWAY COMPANY et al.,
Defendants.

In the matter of the Intervening Petitions of the Chicago, Milwaukee & St. Paul Railway Company, The Huntting Elevator Company and Jacob Rau.

Petition of the Chicago, Milwaukee & St. Paul Railway Company, The Huntting Elevator Company and Jacob Rau, for Writs of Certiorari, to the United States Circuit Court of Appeals for the Seventh Circuit

GEO. R. PECK,
BURTON HANSON,
COUNSEL FOR PETITIONERS.

The Gunthorp-Warren Printing Company, 53 Dearborn St., Chicago.

IN THE

Supreme Court of the United States.

OCTOBER TERM, A. D. 1897.

CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY, THE HUNTTING ELEVATOR COMPANY AND JACOB RAU,
Petitioners.

Petitions for Writs of Certiorari.

Petition for Writ of Certiorari requiring the United States Circuit Court of Appeals for the Seventh Circuit to certify to the Supreme Court for its review and determination the case of

C. H. BOSWORTH, RECEIVER, ET AL.,
Appellants,
vs.
CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY,
Appellee.

C. H. BOSWORTH, RECEIVER, ET AL.,
Appellants,
vs.
THE HUNTTING ELEVATOR COMPANY,
Appellee.

C. H. BOSWORTH, RECEIVER, ET AL.,
Appellants,
vs.
JACOB RAU,
Appellee.

which said appellees were intervenors in the suit of *Mercantile Trust Company* v. *The Chicago, Peoria and St. Louis Railway Company et al.*, which last mentioned

suit was brought in the Circuit Court of the United States for the Southern District of Illinois, to foreclose a certain mortgage or deed of trust given by said Chicago, Peoria and St. Louis Railway Company to said Mercantile Trust Company, in which suit said Bosworth was appointed Receiver of said Chicago, Peoria and St. Louis Railway.

To the Honorable Supreme Court of the United States:

The Chicago, Milwaukee and St. Paul Railway Company, the Huntting Elevator Company and Jacob Rau separately petition and show to this honorable court as follows:

First. That these cases involved the same question and were heard as one case before the Master, the Circuit Court and the Circuit Court of Appeals, and have from their inception been treated by the parties and the courts in which they have been pending as one case, and your petitioners have therefore united in making this petition, but it is presented to this court as the separate petition of each of said petitioners.

The question involved in these cases is this: Sixty cars loaded with barley consigned from points in Iowa, Minnesota and Wisconsin to St. Louis, Missouri, were destroyed by fire, while in transit, at East St. Louis, Illinois. The petitioners claim that they were in the possession of the Receiver at the time of the fire, while the Receiver contends that he had delivered them to the next connecting carrier, the Terminal Railroad Association of St. Louis, and that they were in the possession of that Association at the time the loss occurred. The question therefore is, what constitutes a delivery of property in car-load lots from one carrier to another, while in

course of transportation? By reason of the rule adopted by the Federal courts in

Myrick v. *R. R. Co.*, 107 U. S., 102,
R. R. Co. v. *Jones*, 155 U. S., 334,

that the carrier in whose possession property that is in course of transportation over several connecting lines is, at the time of loss or damage, is alone liable, unless the initial carrier, by a special through contract of carriage that is certain and definite in its terms, assumes such liability, this question becomes one of great gravity and importance, for it affects the interests of all persons who are compelled to ship their products over several connecting lines of carriers to get them to market, and who may be unable to make a special contract with the initial carrier that it will assume liability for all loss and damage to the property transported, whether occurring on its or any one of the lines of the several connecting carriers.

And while this court, in *Pratt* v. *Railway Company*, 95 U. S., 43, had occasion to pass upon the question of the delivery of *package freight* as between connecting carriers, it has never considered the question, What constitutes a delivery of freight in *car-load lots* when in course of transportation over several connecting lines of carriers? And by recurring to the opinions filed in these cases by each one of the Circuit judges it will be seen that there exists differences of opinion among said judges concerning what constitutes a delivery of freight in car-load from one carrier to another, as well as concerning the rule announced in the Pratt case when applied to the question of delivery as it arises in these cases.

These cases were instituted by the filing of intervening petitions in the aforesaid suit of the *Mercantile Trust Company* v. the *Chicago, Peoria & St. Louis Railway Com-*

pany to foreclose a mortgage or trust deed given by the railway company in which said Bosworth was appointed Receiver. The grounds of the petitions were that the cars and the barley they contained at the time they were destroyed by fire were in the possession of the Receiver, and that he negligently allowed them to stand or to be stored on tracks near by a long wooden warehouse that was filled with loose hay, through and into which locomotive engines were continually passing and repassing, which warehouse taking fire, was itself consumed, along with said cars and their contents. The Receiver denied that the cars were in his possession, and alleged that before the fire occurred he had delivered them and their contents to the next connecting carrier, the Terminal Railroad Association of St. Louis, and that they were in the possession of that Association at the time of the fire and that that Association negligently placed them alongside said wooden warehouse, which he characterized in his answer as "a vertible fire-trap." The matters in controversy were referred to the Honorable Stuart Brown, of Springfield, Illinois, the Master in chancery of that court, to take the testimony and report thereon to the court. The report of the Master being in favor of the intervenors, exceptions were filed thereto by the Receiver. The report and exceptions came before the Circuit Court, the Honorable William J. Allen, District Judge, presiding, for hearing, whereupon the exceptions were overruled and decrees entered in favor of the intervenors for the amounts reported by the Master, as follows:

Chicago, Milwaukee and St. Paul Railway Company	$9,033.73
S. Y. Hyde Elevator Company	2,154.53
Huntting Elevator Company	2,600.95

Thomas McMichael & Son	3,169.25
W. W. Cargill Company	1,253.23
Jacob Rau	1,144.07
Henry Rippe	1,165.67
Gilchrist & Co	805.00

Appeals were taken from the decrees entered in the cases of the Chicago, Milwaukee and St. Paul Railway Company, the Huntting Elevator Company and Jacob Rau. No appeals were taken in the other cases for the reason that it was stipulated that the decrees in those cases should abide the result of the appeals in the three cases above named. The appeals came on for argument before the United States Circuit Court of Appeals on the 25th day of October, 1897, and were held under advisement until the 25th day of February, 1898, when each one of the Circuit judges comprising said court handed down a written opinion, Circuit Judges Woods and Showalter holding that the decrees should be reversed and the intervening petitions dismissed, each basing his opinion upon reasons that were entirely different from the other, while Circuit Judge Jenkins filed a dissenting opinion fully sustaining the report of the Master in chancery as well as the decree of the Circuit Court. It therefore appears that the Master in chancery, the District judge who presided at the Circuit, and one of the Circuit judges sitting in the Court of Appeals held that the cars and their contents at the time they were destroyed by fire had not been delivered to the Terminal Association but were in the possession of the Receiver, and that he was liable therefor, while the two remaining Circuit Judges held that the Receiver had made a delivery of said cars and their contents to the next succeeding carrier, the Terminal Railroad Association of St. Louis, but based their opinions and conclusions upon entirely different reasons.

Second. Your petitioners show that it appears by the record of said causes in said Circuit Court of Appeals, a certified copy of which is herewith filed in this court and presented as a part of this application, in accordance with the rule of this court, that this litigation arises upon the following state of facts:

That the Chicago, Milwaukee and St. Paul Railway Company is a corporation organized and existing under and by virtue of the laws of the State of Wisconsin, and is a citizen of that state, and as such was a common carrier of freight from points in Iowa, Minnesota and Wisconsin, to Rock Island, one of its terminii in the State of Illinois, and that it was the owner of fifty-four of the sixty cars in which the barley in question was transported, that thirty-eight of said fifty-four cars, together with their contents, were totally destroyed at East St. Louis while in the possession of said Receiver, and that the value thereof as stipulated by the parties was $9,033.73, the remaining sixteen cars, which were partially destroyed, were repaired by the Receiver and returned to said railway company; that the Huntting Elevator Company, a corporation organized and existing under and by virtue of the laws of the State of Iowa, and a citizen of that state, Jacob Rau, a citizen of the State of Minnesota, James N. Gilchist and Colen F. Bell, citizens of said State of Iowa, engaged in business as partners under the firm name of Gilchrist & Co., at McGregor, in said state, Thomas C. McMichael and William McMichael, citizens of said State of Iowa, and engaged in business as partners under the firm name of McMichael & Son, at McGregor, in said state, the S. Y. Hyde Elevator Company, a corporation organized and existing under the laws of the State of Wisconsin, and a citizen of said state, and the W. W.

Cargill Company, a corporation organized and existing under the laws of the State of Wisconsin, and a citizen of that state, were engaged in the business of buying barley and shipping the same from various points in the States of Iowa, Minnesota and Wisconsin to St. Louis, Missouri; that their shipments of barley originated at stations on the line of railroad of the Chicago, Milwaukee and St. Paul Railway Company, and usually in cars of that company, and by that company transported to Rock Island, Illinois, one of the terminii of its line of road, and at that place the same were delivered to the Rock Island and Peoria Railroad Company, a connecting carrier, and by said last named company transported to Peoria, in said State of Illinois, and there delivered to the Chicago, Peoria and St. Louis Railway Company, a connecting carrier, which company was being operated by said Bosworth, as Receiver, and will hereafter be called the Receiver's company, and by that company transported to East St. Louis, Illinois, there to be delivered by the Receiver's company upon receiving orders from the consignees of said barley, to the Terminal Railroad Association of St. Louis, or the Wiggins Ferry Company, or some other connecting carrier, thence to be taken to its destination at St. Louis and there delivered to the consignees. This was the usual route employed by these parties for the shipment of their barley to St. Louis.

The Receiver's company had no terminal facilities whatever at East St. Louis, which was the southern terminus of its line of road; it had neither yard room nor switching facilities. It therefore entered into a contract with the Terminal Railroad Association of St. Louis whereby is secured the necessary yard room for handling and storing its cars, and switch engines and crews for

switching its cars to and from its main track and the tracks which it had the use of under its contract with the Terminal Association, and for making and breaking up its trains and for doing the necessary work of handling and moving its cars, for which the Receiver's company paid the Terminal Association a stated amount per car for each car handled. (Rau Rec., 111, 112.)

That on the evening of the 28th day of October, 1894, sixty cars loaded with barley, while standing on the tracks which the Receiver's company had the use of under its contract with the Terminal Association, were either damaged or totally destroyed by fire, said fire originating in the wooden warehouse hereinbefore referred to and characterized by the Receiver's answer as a "veritable fire-trap." That all of these sixty cars were loaded with barley at various stations on the railroad of the Chicago, Milwaukee and St. Paul Railway Company in Wisconsin, Minnesota and Iowa, and were all consigned to certain consignees at St. Louis, Missouri; that in due course of transportation said cars were delivered to the Receiver's company at said Peoria, and by that company hauled from said Peoria to the end of its line at said East St. Louis. At that point its road engines were uncoupled from the trains which brought the cars to East St. Louis and taken to the round house of the Terminal Association, which stored them under the aforesaid agreement. Thereupon and in pursuance of the agreement between the Receiver's company and the Terminal Association, whereby the latter furnished yard room, tracks and switching service for the Receiver's company, a switch engine and crew of the Terminal Association switched the cars from the place where they were left standing on the main track of the Receiver's company to the tracks which that company

had the use of under its agreement with the Terminal Association. There they remained standing until they were destroyed by fire as aforesaid.

It further appears from the record in these cases that under the custom which existed at East St. Louis in reference to handling the barley business of the Receiver's company, after cars containing barley had been placed upon these tracks which the Receiver's company used its agent at East St. Louis would take the way-bills under which the cars had been delivered into the possession of the Receiver's company and hauled to East St. Louis, which way-bills contained on their face the consignor, consignee, number, destination and contents of the car, and notify "*the consignee that we* (the receiver) *had a car numbered "so and so, loaded with barley, where do you want it?*" (Rau Rec., 205.) In due time, this notice which the Receiver's agent had sent to the consignee the consignee would send back to the Receiver's agent endorsed on the back with directions where the car should be sent. *This was done under an arrangement between the consignees of this barley and the Receiver's company, that it would hold their barley at East St. Louis subject to their orders*—so the Receiver's agent testified:

Q. Was that a different and separate transaction having reference to the orginal contract between the shippers and the C., M. & St. P.; *was it a new arrangement the consignee directed and controlled*, or was it the original arrangement named by the shipper?

A. *A new arrangement by the consignee, who placed orders with us to hold this barley.* (Rau Rec., 205.)

Thereupon the Receiver's agent would make out a way-bill containing the name of the consignee, the destination, number and contents of the car, take it to the agent of the

Terminal Association, deliver it to him, and take his receipt. Until this way-bill was received, the Terminal Association of course had no knowledge concerning these cars further than it had switched them from the main line of the Receiver's company to the tracks which that company had the use of under the aforesaid agreement, and had earned in consequence a certain amount, depending upon the number of cars switched. It did not and could not know until this way-bill was received that the cars contained barley, nor what they contained, or that they were destined to St. Louis or to some other point, and if so, where or to whom, or by what route they were consigned.

Upon the receipt of this way-bill from the Receiver's company's agent, the agent of the Terminal Association would give directions to the switching crew and they would take the car out of the Receiver's portion of the yard and place it in the Terminal Association's portion of the yard and there take it to the connection or destination indicated on the way-bill. (Rau Rec., 82.) For this service the Receiver's company paid the Terminal Association a stated amount for each car so switched. It further appears that cotemporaneous with the delivery of the way-bill by the Receiver to the Terminal Association, and not before, if the car named in the way-bill was the car of some company other than the Receiver's company, the Receiver's agent at East St. Louis would notify the car accountant of his company that car numbered, for example, 2,500, belonging to the Chicago, Milwaukee and St. Paul Railway Company, had that day been delivered to the Terminal Association. Thereupon such car accountant would send a formal notice, called a junction car report, to the car accountant of the Chicago, Milwaukee

and St. Paul Railway Company, notifying him of the delivery of the car to the Terminal Association. Up to the time of receiving this junction report, the car was charged to the Receiver's company on the books of the Chicago, Milwaukee and St. Paul Railway Company.

It further appears from the record that the Receiver made no proof of having ever sent to the consignee the usual and customary notice of the arrival of any of the cars in controversy. It also appears, and the fact is not in dispute, that no way-bill had been delivered to the Terminal Association for any of the cars in controversy, and that no notice had been sent by the Receiver's agent to his car accountant, or by that car accountant to the car accountant of the Chicago, Milwaukee and St. Paul Railway Company, that any of the cars in controversy had been delivered to the Terminal Association.

It also appears that the cars in controversy at the time they were destroyed by fire were standing on the tracks which the Receiver's company commonly use under its agreement with the Terminal Association, granting it track and yard room and other terminal facilities at East St. Louis. This fact was stipulated. (Rau Rec., 115.)

It also appears that after the foregoing facts had been testified to, counsel for Receiver's company stated that he had not been able to obtain the testimony of the consignees as he had anticipated, and therefore asked for further time, stating that he expected to prove by them that the Terminal Association, as an inducement to them to ship their barley by that route, agreed to hold the cars on *its tracks* at East St. Louis, and offered them other facilities in *its yards* at that place. To avoid further delay counsel for appellees admitted that if the persons named were present they would testify substantially as

counsel stated he expected they would testify—assuming, of course, that this arrangement, if it existed, became operative only after the cars had been delivered into the possession of the Terminal Association so that they could be said to be on *its tracks* and in *its yards*, and that delivery could not be said to have been made until the agent of the Receiver's company had delivered to the agent of the Terminal Association the customary way-bill containing the names of the consignor and consignee, the route and destination, and the number and contents of the car, and taken the receipt therefor. For until this had been done the Receiver's company had not parted with either the possession or control of the cars, and the Terminal Association could not know which of the cars that were standing on the tracks which the Receiver's company used were routed over its tracks, and if so, what they contained, where they were destined or to whom consigned, and until this information was received it would not, as a matter of course, accept delivery. (Rau Rec., 82, 86, 87, 90, 95.) And such delivery not having been made of any of the cars in controversy, the arrangement which counsel stated he expected to prove had no application to this case.

Palmer v. *C., B. & Q. R. R. Co.*, 13 Atl. Rep., 818.

Mt. Vernon Co. v. *Ala. Gt. North. Ry. Co.*, 92 Ala., 296–298.

Texas & Pacific Ry. Co. v. *Clayton*, 51 U. S. App., 676.

Third. It was upon the foregoing facts that the court rendered its decision reversing the decrees of the court below. Presiding Judge Woods held that the decrees should be reversed on the ground that the arrangement

between the consignees and Terminal Association, which counsel for Receiver's company stated he expected to prove, became effective immediately upon the cars being placed on the tracks which the Receiver's company used under its agreement with the Terminal Association; that as soon as the cars were so placed on these tracks, that Association would be deemed to be holding them, notwithstanding there had been no delivery of them in the usual and customary way that deliveries were made at that place by the Receiver's company to the Terminal Association, and that this would be true although the Terminal Association had no knowledge of the destination, consignee or contents of the car. He cites as sustaining his position the case of *Pratt* v. *Ry. Co.*, 95 U. S. 43, and the case of *Mount Vernon Company* v. *Ala. Gt. North. Ry. Co.*, 92 Ala., 296.

Judge JENKINS writes a dissenting opinion, holding that the decrees should be affirmed. In commenting upon the opinion of the presiding judge he says:

"I am unable to concur in this conclusion. I have sought to show that there had been no delivery of these cars to the Terminal Association. It had not knowledge of their destination. It had not knowledge of the consignees of them. They were subject to the direction and control of the Receiver. The Terminal Association under its contract with the Receiver had placed these cars upon these tracks for the Receiver and for a compensation agreed upon. It therein was the agent of the Receiver. It could not know whether these cars were to be transported over its line or the lines of the Wiggins Ferry Company; it could not know in what direction they were to be transported, or their ultimate destination; when it had placed the cars on its track pursuant to its contract with the Receiver, it had nothing further to do with them until the Receiver had dispossessed himself of possession and control and had invested the Terminal Association therewith. I cannot comprehend that the general agree-

ment between the Terminal Association and consignees can become operative with respect to the contents of these cars until delivery to the Terminal Asaociation and it had been invested with the exclusive possession and the exclusive control of them. The force of the reasoning is not perceived whereby it is held that because in fact these goods were ultimately to go to persons who had contracted with the Terminal Association—of which contract Receiver had no knowledge—therefore these goods were held under that contract before delivery in fact to the Terminal Association and before it was invested with exclusive control of them. * * * The question here is whether the Receiver is absolved from liability ; whether failing a delivery of the cars to the Terminal Association, failing a surrender by the Receiver of control over them, with ignorance upon the part of the Terminal Association of their destination or their consignees, the agreement between the Terminal Association and the consignee had become operative with respect to these goods. I think not. If the Receiver had directed that the Terminal Association under its contract with him should transfer these goods to the Wiggins Ferry Company, his order must have received recognition and have been carried out by the Terminal Association, and it cannot be doubted that up to the time of the fire in question the goods were so subject to the Receiver's direction and control. For these reasons I think that the decrees appealed from should be affirmed."

He also cites *Pratt* v. *Ry. Co.*, *supra*, and *Mount Vernon Company* v. *Ala. Gt. North. Ry. Co.*, *supra*, to sustain his position.

Judge Showalter, in his opinion, holds that the moment the switch engine of the Terminal Association was coupled to the train of the Receiver's company, for the purpose of switching it from the main line of that company to the tracks which the Receiver's company used under its agreement with the Terminal Association, the Receiver's company's liability as a common carrier ceased and that of the Terminal Association began, and that the Receiver's

company was not again invested with any liability either as a common carrier or as a warehouseman in regard to cars so handled. He also cites the cases of *Pratt* v. *Ry. Co.*, and *Mount Vernon Company* v. *Ala. Gt. North. Ry. Co.*, to sustain his position.

These opinions are a part of the certified copy of the transcript of record herein.

Fourth. Your petitioners further show that they are informed and believe and do therefore respectfully represent and submit that there are good and sufficient reasons why the judgment of said Circuit Court of Appeals should not be allowed to stand as the final judgment in these cases, but that the record herein made should be reviewed and these cases finally determined by this Honorable Court; and they therefore present this, their separate petition, to that end, and in support thereof urge the following reasons:

1. That the opinions delivered by Judges Woods and Showalter, the two judges constituting a majority of said Circuit Court of Appeals, are not entitled to any strong presumption of correctness, for they are not only opposed to each other, but are opposed to those announced by Judges Jenkins and Allen and by Master in Chancery Brown.

2. That by reason of the difference of opinion among the judges of the Circuit Court of Appeals the questions of law involved in these cases are in a state of grave and serious uncertainty, and that the decision of the majority of the judges of said Circuit Court of Appeals is not consistent with the decisions of this Honorable Court, especially in the cases of *Pratt* v. *Railway Co.*, 95 U. S., 43, and *Covington Stockyard* case, 139 U. S., 128; nor with the decision of the Circuit Court of Appeals for the Second Circuit in *Texas and Pacific Railway Co.* v.

Clayton, 51 U. S. App., 676, S. C. 84 Fed. Rep., 305, nor with the decisions of the state courts:

Mt. Vernon Co., v. *Ala. Gt. Nor. Ry. Co.*, 92 Ala., 296, 298.

Palmer v. *C. B. & Q. R. R. Co.*, 13 Atl. Rep., 818.

3. That the questions involved in the correct decision of these cases are most important, as will appear by a reading of the opinions of the judges of said Circuit Court of Appeals. The amount involved in these cases is not only large, but there are numerous other claims pending against the Receiver growing out of the same fire, which the parties have agreed shall abide the final determination of these cases. But aside from any monetary consideration, the commercial considerations involved are all-important. In recent years there has come into existence at all large commercial centers in the west, like Chicago, St. Louis, Kansas City, St. Paul and Minneapolis, corporations that are organized for the double purpose of supplying terminal facilities to railread companies which are unprovided with such facilities, and of transporting such freight as is received from their connections to the points and places of industry that are reached by their various tracks. The Terminal Railroad Association of St. Louis is such a corporation. It not only furnishes terminal facilities such as yard and track room for handling and storing cars and switch engines and crews to such railway companies as have need of such facilities at East St. Louis, but transports all freight which such companies deliver to it from East St. Louis to such places as its various tracks reach in East St. Louis and St. Louis. The Receiver's company had no terminal facilities whatever at East St. Louis, the southern terminus of its line of rail-

road. It contracted with that Association for the necessary yard room and track facilities and switch engine and crews for handling its cars, making and breaking up its trains and for storage room for a reasonable number of cars, not exceeding 150 at any one time. Under this contract so much of tracks numbered from forty to fifty in the yards of the Terminal Association as was necessary to give the Receiver's company room for 150 cars was set aside and used by that company in the transaction of its business. The cars of barley in controversy at the time they were destroyed by fire were standing on some one or more of these ten tracks, having been switched there from the main line of the Receiver's company by the switch engine and crew of the Terminal Association under its agreement to furnish that company with certain terminal facilities. No way-bill or other manifest, giving the name of the consignee, or route, or destination, or the number or contents of the car, had been tendered or delivered to the Terminal Association for any of the cars, although the invariable custom and practice at that place between the two companies was to tender such a way-bill whenever it was intended to make a delivery of a car of freight; and a delivery was never regarded as having been made until a way-bill had been tendered and accepted and the car named therein taken from the tracks which the Receiver's company used under its agreement with the Terminal Association, and switched to the tracks of that Association. Proceedings were taken against the Receiver's company to recover the value of the cars and their contents, the claim being that they were in the possession of that company when the loss occurred. After a litigation lasting three years, the claimants are advised by a divided court, Judge Jenkins dissenting, and Judges Woods and Showalter disagreeing with each other

quite as much as with Judge Jenkins, that the wrong carrier has been pursued, and that their remedy is against the Terminal Association. These cases, therefore, not only involve the question, what constitutes a delivery of freight in car-load lots, as between carriers in the ordinary course of business, but as between carriers sustaining to each other the relation which existed between the Receiver's company and the Terminal Association by virtue of the contract under which the former acquired from the latter the use of such terminal facilities as its needs at East St. Louis required. And when it is considered that arrangements such as existed between the Receiver's company and the Terminal Association at East St. Louis are in operation in nearly all the large commercial and railway centers of the United States, and that there are hourly vast quantities of freight of immense value in cars standing on tracks under circumstances and conditions that are substantially similar to those that are present in these cases, and the interest which the owners of such freight in the event of loss have in knowing in which carrier the possession is, the questions involved in these cases are too important to be left in the unsatisfactory and unsettled condition in which they are left by the opinions of the two judges constituting a majority of said Circuit Court of Appeals.

Wherefore, your petitioners respectfully and separately pray that writs of *certiorari* may be issued out of and under the seal of this Honorable Court, directed to the United States Circuit Court of Appeals for the Seventh Circuit, commanding said court to certify and send to this court on a day certain, to be therein designated, a full and complete transcript of the record, and all proceedings of said Circuit Court of Appeals in each of the said cases therein, entitled as follows:

IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT—OCTOBER TERM, A. D. 1897.

MERCANTILE TRUST COMPANY
vs.
CHICAGO, PEORIA & ST. LOUIS RAILWAY COMPANY *et al.*

In the matter of the intervening petition of the Chicago, Milwaukee & St. Paul Railway Company.

C. H. Bosworth, Receiver, etc., *Appellant*,
vs.
The Chicago, Milwauke & St. Paul Railway Company, *Appellee*.
No. 442.

IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT—OCTOBER TERM, A. D. 1897.

MERCANTILE TRUST COMPANY
vs.
CHICAGO, PEORIA & ST. LOUIS RAILWAY COMPANY *et al.*

In the matter of the intervening petition of Jacob Rau.

C. H. Bosworth, Receiver, etc., *Appellant*,
vs.
Jacob Rau, *Appellee*.
No. 452.

IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT—OCTOBER TERM, A. D. 1897.

MERCANTILE TRUST COMPANY
vs.
CHICAGO, PEORIA & ST. LOUIS RAILWAY COMPANY *et al.*

In the matter of the intervening petition of the Huntting Elevator Company.

C. H. Bosworth, Receiver, etc., *Appellant*,
vs.
The Huntting Elevator Company, *Appellee.* } No. 453.

to the end that each of said cases may be reviewed and determined by this court as provided in section 6 of the act of Congress entitled "An act to establish Circuit Courts of Appeal and to regulate in certain cases the jurisdiction of the Courts of the United States, and for other purposes," approved March 3, 1891; and that each of your petitioners may have such other or further relief or remedy in the premises as to this court may seem appropriate and in conformity with the said act, and that the said decision of the said Circuit Court of Appeals in each of said cases may be reversed by this honorable court, and your petitioners will ever pray.

CHICAGO, MILWAUKEE AND ST. PAUL RAILWAY COMPANY,
THE HUNTINGTON ELEVATOR COMPANY, and
JACOB RAU,
Petitioners,

By Geo. R. Peck & Thos. E. Hanna,
Their Attorneys

STATE OF ILLINOIS, }
COUNTY OF COOK. } ss.

Burton Hanson, being duly sworn, says that he is one of the attorneys for the Chicago, Milwaukee and St. Paul Railway Company, the Huntting Elevator Company and Jacob Rau, the petitioners above named, and as such attorney he has had personal charge for said petitioners of the cases in the foregoing petition mentioned, in the Circuit Court of the United States for the Southern District of Illinois and in the United States Circuit Court of Appeals for the Seventh Circuit; that he has read the foregoing petition, and that the facts therein stated are true, to the best of his knowledge, information and belief.

Burton Hanson

Subscribed and sworn to before me this 16th day of April, A. D. 1898.

.....

Notary Public, Cook County, Ill.

IN THE SUPREME COURT OF THE UNITED STATES—
OCTOBER TERM, 1897.

To Honorable Bluford Wilson and Philip Barton Warren, Attorneys for C. H. Bosworth, Receiver, named in the annexed and foregoing petition:

In the cases mentioned in the annexed and foregoing petition, you will please take notice that on Monday, the

2nd day of May, 1898, at the opening of court, or as soon thereafter as counsel can be heard, the petition of which the foregoing is a copy will be submitted to the Supreme Court of the United States for a decision of the said court thereon.

Yours, &c.,

Geo. Klee

Arthur Stanwood

Attorneys for Chicago, Milwaukee and St. Paul Railway Company, The Hunting Elevator Company, and Jacob Rau, Petitioners.

Service of a copy of the foregoing notice and of the petition for *certiorari* annexed thereto is hereby admitted this ..... day of ....., 1898.

.....

.....

Attorneys for C. H. Bosworth, Receiver, &c.